

REMARKS

Claims 2-27 are present in the application. In view of the remarks that follow, Applicants respectfully request reconsideration.

Restriction Requirement

The Office Action sets forth a restriction requirement between two groups of claims, which are Group I (Claims 2-14 and 20-27) and Group II (Claims 15-19). The restriction requirement is respectfully traversed, for the following reasons.

MPEP §803 and §808.02 explain that, even if an application does contain claims to two or more distinct inventions, restriction is not permitted if all of the claims can be examined without serious burden. In the present Office Action, the Examiner asserts that the reason for the restriction requirement is that "there would be a serious search and examination burden if restriction were not required". However, this assertion is respectfully traversed. Claims 2-27 are currently pending in the present application, and pending Claims 2-27 have all previously been searched and examined. Applicants' last Response converted Claim 6 from a dependent claim to an independent claim, but this change in format did not cause any change at all to the scope of Claim 6. The PTO provides restriction practice for situations where there are claims have not yet been searched and examined on the merits, but that is not the case here. Pending Claims 2-27 have all been fully searched and repeatedly examined on the merits, in four separate prior Office Actions that are respectively dated November 15, 2006, June 26, 2007, November 15, 2007, and May 14, 2008. Stated differently, the USPTO has previously assured Applicants on four separate occasions that each and every one of Claims 2-27 has been properly and thoroughly searched and examined on the merits. As a result, there is no valid basis for the Examiner to now assert that it would be a serious burden for him to undertake searching and examination tasks that have actually already been fully completed.

Several years ago, the undersigned was handling a different patent application where an examiner attempted to impose a restriction requirement against a set of claims that had all been

examined on the merits. The undersigned telephoned MPEP Editor Magdalen Greenlief to discuss a subtle aspect of whether that situation really involved two different inventions. Ms. Greenlief indicated that it really didn't matter whether or not the claims recited two different inventions, because the examiner had already examined all of the claims on the merits, and restriction was thus not permissible, because continuing to handle claims that had already been examined did not impose any serious burden on the examiner.

The present situation is essentially the same. Claims 2-27 of the present application have all been repeatedly searched and examined, and in fact have all been previously examined at least four separate times. Pursuant to PTO policy, the Examiner is required to proceed with the ongoing examination of all of Claims 2-27, without regard to whether or not they happen to be directed to different inventions. Accordingly, it is respectfully submitted that the present restriction requirement is completely improper, and must be withdrawn.

The PTO requires that Applicants reply to a restriction requirement, even where (as here) Applicants offer a valid traverse. Therefore, as between the two groups of claims set forth in the Office Action, Applicants provisionally elect with protest the claims in Group I (Claims 2-14 and 20-27).

Conclusion

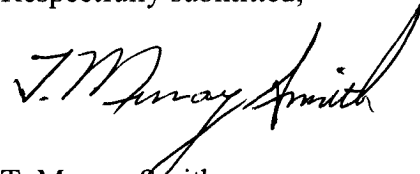
For reasons that are already of record, it is respectfully submitted that all of the pending claims are fully allowable, and favorable reconsideration of this application is therefore respectfully requested. If the Examiner believes that examination of the present application may be advanced in any way by a telephone conference, the Examiner is invited to telephone the undersigned attorney at 972-739-8647.

Appl. No. 10/802,087
Reply to Office Action of October 28, 2008

Attorney Docket No. 2003-1435 / 24061.911
Customer No. 42717

Although Applicants believe that no additional fees are due, the Commissioner is hereby authorized to charge any fees required by this paper, or to credit any overpayment, to Deposit Account No. 08-1394 of Haynes and Boone, LLP.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "T. Murray Smith", with a stylized flourish at the end.

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Enclosures: None

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